

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN OVERSIGHT,)
v.)
U.S. DEPARTMENT OF JUSTICE,)
and)
FEDERAL BUREAU OF INVESTIGATION,)
Case No. 19-cv-8215
Plaintiff,)
v.)
Defendants.)

)

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Justice and the Federal Bureau of Investigation under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B), as the agency records requested by Plaintiff American Oversight are situated in this district.

4. Because Defendants have failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining

the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media.

6. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Executive Office of United States Attorneys (EOUSA) is a component of DOJ, which receives and processes FOIA requests on behalf of U.S. Attorneys' offices, which are also components of DOJ. The U.S. Attorney's Office for the Southern District of New York has possession, custody, and control of the records that American Oversight seeks.

7. Defendant Federal Bureau of Investigation (FBI) is a component of DOJ, a department of the executive branch of the U.S. government, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). FBI has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

8. The U.S. Attorney's Office for the Southern District of New York conducted an investigation of potential campaign finance violations by Michael Cohen in connection with his

work for and with the presidential campaign of then-candidate Donald J. Trump, including violations of the Federal Election Act of 1971. This investigation led to an indictment and eventual guilty plea by Mr. Cohen. *See* Information, *United States v. Michael Cohen*, 18-cr-602 (S.D.N.Y., filed Aug. 21, 2018), ECF No. 2; Testimony of Michael D. Cohen at 2, Comm. on Oversight & Reform, U.S. House of Representatives, Feb. 27, 2019, <https://www.documentcloud.org/documents/5753160-Michael-Cohen-s-written-testimony-to-House.html>.

9. On July 17, 2019, the federal court that oversaw Mr. Cohen’s prosecution ordered that materials related to Mr. Cohen’s campaign finance violations could be unsealed in light of the Government’s representations that it had concluded the aspects of its investigation that justified the continued sealing of materials related to Mr. Cohen’s campaign finance violations. Memorandum & Order, *United States v. Michael Cohen*, 18-cr-602 (S.D.N.Y. filed July 17, 2019), ECF No. 47. The Court recognized that materials related to Mr. Cohen’s campaign finance violations concerned “a matter of national importance” and disclosure of those materials was warranted in light of the “weighty public ramifications” of the conduct described in the materials. *Id.*

10. On July 22, 2019, American Oversight submitted a FOIA request to EOUSA and FBI for records that, broadly speaking, reflecting the content of interviews conducted in the course of the government’s investigation of potential campaign finance violations committed by President Trump, Michael Cohen, the Trump Organization, or individuals representing President Trump or the Trump Organization. Attached hereto as Exhibit A.

11. Specifically, American Oversight’s FOIA request sought the following:

- 1) All FBI form 302s reflecting the content of all interviews conducted as a part of the government’s investigation of potential

campaign finance violations committed by President Trump, the Trump Organization, Michael Cohen, or others representing President Trump or the Trump Organization, as well as any investigation of other potential violations related to that investigation (including, for example, obstruction of justice). Specifically, this request seeks 302s from the investigation(s) that a Southern District of New York court acknowledged had been concluded, at least in part, in its July 17, 2019 Opinion and Order in *United States v. Cohen*, Case No. 18cr602 (S.D.N.Y.), ECF No. 47.

- 2) All other records intended to summarize, memorialize, or record witness interviews or witness statements collected or used in the investigation(s) described in Item 1, including written proffers, written summaries of oral proffers, transcripts or recordings of any witness interviews or statements, and any other record summarizing, memorializing, or reproducing the content of witness interviews or statements collected or used in connection with the above-described investigation.

Please provide all responsive records from September 1, 2016, through the date the search is conducted.

Ex. A at 2.

12. The records American Oversight has requested are related to an investigation and prosecution conducted by the U.S. Attorney's Office for the Southern District of New York and, on information and belief, the requested records are situated in this district.

13. American Oversight requested expedited processing of its request. Ex. A at 4-6.

14. By letter dated July 24, 2019, EOUSA acknowledged receipt of American Oversight's request and noted that the request seeks records from "one or more field offices." EOUSA assigned the request tracking number EOUSA-2019-003828.

15. On July 25, 2019, EOUSA indicated that it had denied American Oversight's request for expedited processing by a system-generated FOIAOnline notification, which contained no explanation of the agency's reasoning for its denial.

16. By letter dated July 31, 2019, FBI acknowledged receipt of American Oversight's request and assigned the request tracking number 1443116-000.

17. By letter dated August 1, 2019, FBI granted American Oversight's request for expedited processing.

18. American Oversight has not received any further communication from Defendants regarding its FOIA Request.

Exhaustion of Administrative Remedies

19. As of the date of this complaint, Defendants have failed to (a) notify American Oversight of any determination regarding its FOIA request, including the scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

20. Through Defendants' failure to respond to American Oversight's FOIA request within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

21. EOUSA's denial of expedited processing is subject to immediate judicial review pursuant to 5 U.S.C. § 552(a)(6)(E)(iii).

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Grant Expedited Processing
(as to EOUSA)

22. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

23. American Oversight properly requested records within the possession, custody, and control of DOJ on an expedited basis.

24. DOJ is an agency subject to FOIA, and it must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

25. The records sought relate to a subject of widespread and exceptional media interest implicating questions concerning the government's integrity that affect public confidence. Therefore, American Oversight's FOIA request justified expedited processing under FOIA and DOJ regulations.

26. DOJ's failure to grant expedited processing of American Oversight's FOIA request violated FOIA and DOJ regulations.

27. American Oversight is therefore entitled to declaratory and injunctive relief requiring DOJ to grant expedited processing of American Oversight's FOIA request.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

28. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

29. American Oversight properly requested records within the possession, custody, and control of Defendants.

30. Defendants are an agency and a component thereof subject to FOIA and must therefore make reasonable efforts to search for requested records.

31. Defendants failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA request.

32. Defendants' failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

33. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA request.

COUNT III
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

34. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

35. American Oversight properly requested records within the possession, custody, and control of Defendants.

36. Defendants are an agency and a component thereof subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

37. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA request.

38. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA request.

39. Defendants' failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

40. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order EOUSA to expedite the processing of American Oversight's FOIA request;
- (2) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA request;
- (3) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA request;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: September 4, 2019

Respectfully submitted,

/s/ Austin R. Evers
Austin R. Evers
Daniel A. McGrath* N.Y. Bar No. 5541198

AMERICAN OVERSIGHT
1030 15th Street NW, B255
Washington, DC 20005
(202) 897-4213
austin.evers@americanoversight.org
daniel.mcgrath@americanoversight.org

Counsel for Plaintiff

**pro hac vice motion forthcoming*